

REMARKS

Claims 1-7, 10, 11, and 21-23 are pending in the present application.

Applicants have amended claims 1, 3, 5, 10 and 11, and added new claims 21-23.

Support for these amendments can be found throughout the application as filed, e.g., at page 6, lines 7-12; page 11, lines 8-16; and page 33, line 29 to page 34, line 13, *inter alia*. In addition, Applicants have amended to specification to correct an obvious typographical error.

No new matter has been added.

Applicants note that there were two claims numbered 8 and that the Examiner has proactively renumbered the claims to correct this error. Applicants thank the Examiner for doing so, and the present claim set reflects the corrected numbering.

Restriction Requirement

Responsive to the action mailed October 13, 2006, applicants elect the invention of Group I, claims 1-7, drawn to a method of identifying a molecule that binds a D4Z4 binding element. In addition, applicants further elect FSHD region gene 1 (FRG1). This election is made with traverse, in part, as Applicants submit that the independent claim 1 does not specify using a cell that expresses a 4q35 gene, and should not be limited thereto. Therefore, as the Examiner must search the broad claim 1, such a search will necessarily produce any art relevant to all three genes. Applicants submit that in light of this, the second restriction requirement is improper. Applicants respectfully request that the Examiner reconsider the restriction requirement. As the number of genes recited (three) is small and reasonable (see MPEP 803.04), Applicants request that the Examiner kindly consider all three genes. If the Examiner can not or will not examine methods including cells expressing all three genes at the same time, Applicants request that the Examiner consider each gene in turn, i.e., as a species election.

Furthermore, Applicants have amended claims 10 and 11 to depend from claim 1. These claims simply add additional steps to the method described in claim 1, and therefore Applicants request that they be examined with group 1. Finally, Applicants submit that new claims 21-23 also belong in group I, and request examination of those claims with claims 1-7.

Applicant : Tupler et al.
Serial No. : 10/686,491
Filed : October 14, 2003
Page : 7 of 7

Attorney's Docket No.: 07917-180001 / UMMC 03-18

Conclusion

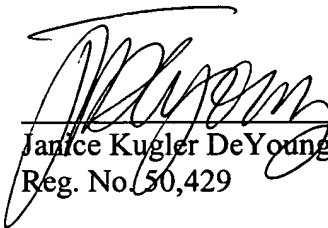
Applicants submit that the claims as amended are patentable and request rapid notification thereof.

If the Examiner feels that it would be useful in advancing the prosecution of this application, he is invited to telephone the undersigned any week day, at 617-956-5985.

Please apply any charges or credits to Deposit Account No. 06-1050.

Respectfully submitted,

Date: Nov. 13, 2006


Janice Kugler DeYoung
Reg. No. 50,429

Fish & Richardson P.C.
225 Franklin Street
Boston, MA 02110
Telephone: (617) 542-5070
Facsimile: (617) 542-8906